

TO: Chairpersons, Community Policy and Management Teams

FROM: Jo Lynne DeMary

DATE: August 12, 2002

SUBJECT: Technical assistance document regarding the Comprehensive Services Act and Special Education.

I am pleased to provide the attached technical assistance document regarding the Comprehensive Services Act (CSA) and Special Education. This document is an update to the one provided to you in 1999, in response to the wishes of the 1999 Virginia General Assembly, as stated in the Virginia Appropriations Act (Item 129R). The purpose of the document is to address federal and state requirements pertaining to the provision of special education services funded under CSA.

I believe you will find this document provides valuable information as communities strive to meet the needs of young people receiving special education and other community-based services. Through our collective efforts, we can fulfill the intent and purpose of the Comprehensive Services Act, to “create a collaborative system of services and funding that is child-centered, family-focused and community-based when addressing the strengths and needs of troubled and at-risk youths and their families in the Commonwealth” (Virginia Acts of the Assembly, Chapter 880, Section 2.1-745).

Please contact Lissa Power-deFur, Director of the Office of Student Services here at the Department of Education, with any questions. Dr. Power-deFur can be reached at (804) 225-2818 or lpower-d@mail.vak12ed.edu.

Cc: Local school division superintendents
Comprehensive Services Act coordinators
CSA State Executive Council
CSA State Local Advisory Team
Office of Comprehensive Services

Comprehensive Services Act – Special Education Funding

Technical Assistance Document

Background

This technical assistance document is a revision of the one originally provided in response to the wishes of the 1999 Virginia General Assembly, as stated in the Virginia Appropriations Act (Item 129R). The purpose of the document is to address federal and state requirements pertaining to the provision of special education services funded under CSA. The written guidance shall include the services that remain the financial responsibility of local school divisions.

Authority

The federal *Individuals with Disabilities Education Act (IDEA)* (20 U.S.C. §§1400, et. seq.), the *Virginia Special Education Regulations* (8 VAC 20-80 et. seq.) and the *Code of Virginia* (§22.1 et. seq.) specify local school division responsibility with respect to the provision of special education and related services to eligible students with a disability. The Comprehensive Services Act (§2.2-5200 et. seq.) includes certain special education students in its target population.

Special Education Demographics and Funding

Demographics

Over 163,000 students with disabilities, ages 2 through 21, were educated by Virginia school divisions and state programs in 2000-01.¹ A statewide, unduplicated count is secured on December 1st of each year, as a requirement for federal funding under IDEA. Of these, less than 1% are served in restrictive settings funded through the Comprehensive Services Act (private day or residential special education placements). The majority of students with disabilities (98%) are served in public school programs. Others are served in public day or residential programs, including correctional facilities. (Special education law requires that, to the maximum extent appropriate, children with disabilities be served in the least restrictive environment [generally the local public school]. Removal to a more restrictive environment may occur only when the nature or severity of the disability is such that education in a less restrictive environment cannot be achieved satisfactorily.)

Funding

¹ State programs include the Virginia Schools for the Deaf and the Blind; Department of Correctional Education schools in juvenile correctional centers; and education programs at state mental health and mental retardation facilities, juvenile detention homes, and state hospitals.

Local school divisions reported \$1,165,531,001 special education expenditures in 2000-01. Of, this, 64% were local funds, 27% state funds and 10% federal funds. An additional \$61,950,617 of CSA funds were used to support the mandated special education costs. On average, the cost of educating a special education student in a local school division in 2000-01 was 2.02 times the cost of educating a student without a disability (\$13,408 vs. \$6,632).

State funding

State funding is made available to school divisions through basic aid, which is based on the requirements of the Standards of Quality (*Code of Virginia*, §22.1-253.1 through 22.1-253.13). In addition, certain add-on, per-child amounts are generated, one of which is the special education add-on. This special education add-on is based on Average Daily Membership (ADM) and special education staffing ratios established by the Appropriation Act and displayed in the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*.

A variety of additional state funding sources are available to support specific special education programs or populations, as displayed in Figure A.

Figure A	
Funding Source	Description
Homebound instruction	Provides reimbursement of school division costs associated with providing education to students who are confined due to a physician's or a psychologist's certification. Reimbursement is based on the locality's composite index.
Regional special education program	Provides partial reimbursement of costs associated with a regional program. Two or more school divisions must participate and the program is governed by a joint board. Programs are limited to students with autism, severe disabilities, multiple disabilities, deafness/hearing impairment, emotional disturbance. Reimbursement is based on the locality's composite index.
Foster care reimbursement	Provides partial reimbursement for costs associated with children placed in foster care across jurisdictional lines who are enrolled in the school division's schools. Reimbursement is higher for special education children.

Local funding

The locality's share of the cost is determined according to the locality's composite index of local ability to pay. This formula, originally developed by the Joint Legislative Audit and Review Commission, ranges from .19 to .8. It is capped at a local share of .8

(80%). Localities generally spend more than the required share to provide education services to children served by that school division.

Federal funding

Federal funds are available through IDEA for preschool and school-age special education programs. The amounts received by each school division are determined by a federal formula that considers historical federal funding, total school enrollment, and poverty level.

Funding of private special education placements prior to CSA

Prior to the passage of the Comprehensive Services Act, the state provided two funding streams to support the costs of children who required private day or private residential placements. The Special Education Private Tuition fund paid a state share of private placements made by the school division. The Interagency Assistance Fund paid 100% of the education costs associated with private placements made by another agency (e.g., social services or juvenile justice). Both of these funding streams were put into the CSA Pool. As a result, the populations whose services were funded by these prior funding streams are included in the CSA population.

Transportation for the child to get to the special education placement is included under state and federal regulations as a related service necessary to implement special education that must be provided at no cost to the parent. Local school divisions were responsible for payment for transportation when accessing the pre-CSA funding streams, and continue to be responsible for payment for transportation.

Children in Foster Care

As indicated previously, local school divisions receive partial reimbursement for costs associated with educating children receiving foster care services and who are placed by another jurisdiction. However, if the local school division where the child is receiving foster care services develops an IEP for a private special education day or residential facility, the responsibility for payment for that placement rests with the CPMT that includes the local social services agency placing the child in foster care. As a result, it behooves all CPMTs to ensure that the local school division participants on CSA teams are aware of the pending placement outside of the jurisdiction and to discuss the appropriateness of the educational placement. See section 8, "Educational Services for Children Placed in Care in Another Locality," in the CSA Implementation Manual (2000) for further discussion of this issue.

Special Education Requirements

Federal and state laws and regulations require state and local governments to provide a free appropriate public education (FAPE) for all eligible children with disabilities (20 USC §1400 et. seq.; Va. Code §22.1-215). Services must be provided at

no cost to parents.² The services identified on the child's Individualized Education Program (IEP) must be provided, regardless of cost. This provision is often termed "sum sufficient." In addition, the state is responsible for ensuring that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined (34 CFR 300.301). Attachment C includes further information about the requirements associated with the Special Education that must be adhered to, regardless of funding source. In addition, readers are referred to the *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* (<http://www.pen.k12.va.us/VDOE/Instruction/Sped/varegs.pdf>) or the *A Parent's Guide to Special Education* (http://www.pen.k12.va.us/VDOE/Instruction/Sped/parent_guide.pdf) for more information.

Special Education and CSA

The passage of CSA in 1992 enabled communities to better meet the needs of children and youth, including children needing special education. Local social service or court service unit staff persons have long been involved in IEP meetings on a case specific basis. The multidisciplinary focus of the FAPT team enables communities to better meet the needs of all children. In 1999, the General Assembly made clear that service plans developed outside of the FAPT process or "collaborative multidisciplinary team process approved by the State Executive Council" will not be eligible for the CSA pool of funds (Va. Code §2.2-5209.) This requirement highlights the importance of multi-agency planning for all children served through CSA – one of the fundamental CSA principals, creation of a system of care for children and families. As federal law gives the parent the right to grant (or not grant) permission for release of education records,³ this Code section provides that "in cases involving the denial of state pool funds resulting from parental refusal to consent to release of student records under federal law, where such refusal precludes the development of placement through the family assessment and planning team process or the approved, collaborative, multidisciplinary team process, an appeal for good cause may be made to the Council."

The sum sufficient nature of special education is captured in the Comprehensive Services Act legislation (Va. Code §2.2 -5211 C) and generated the term, "mandated," to describe special education populations served by CSA. The special education "mandated" services under CSA *do not apply to all children who are eligible to receive special education services* in Virginia. Rather, these services are limited to:

1. those services provided to a student whose IEP calls for a private day special education placement or a private residential special education placement;

² "At no cost" means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as part of the regular education program" (34 CFR 300.26).

³ Family Education Rights and Privacy Act (FERPA), 34 CFR Part 99.

2. the special education portion of a placement of a student who was placed in a private residential facility by another CSA entity; and
3. those services identified on the student's IFSP and identified by the FAPT as necessary to maintain the child in a less restrictive educational placement than a private day or residential placement.

The third category was recognized to ensure that there is no incentive to place the child in a more restrictive (and more costly) residential placement due to the inability to access "mandated" funds for any services that would retain the child in the community. Such an incentive would violate federal and state special education provisions that require that students be placed in the least restrictive environment, moving to a more restrictive placement only when a less restrictive placement is not feasible (34 CFR §§ 300.550 – 300.556). By permitting billing some community-based services to the CSA Pool, the state and school divisions are better prepared to meet these least restrictive education requirements. In addition, there is generally a significant cost savings to communities over placement in private day or residential special education schools.

There are certain restrictions to the services that can be billed to the CSA Pool.

- The services must be identified by the FAPT and be written into the IFSP. The FAPT record should make clear that the services are necessary to keep the child out of a more restrictive special education placement, i.e., for educational reasons. Services for students who are eligible for special education but would benefit from a service for reasons unrelated to the child's education cannot be billed to the CSA Pool as "mandated," such a service would be "nonmandated".
- School divisions must pay for instructional staff members (i.e., teachers) and all services identified in the IEP for those students whose IEPs do not call for private day or private residential placement. Services must be identified in the child's IFSP and be determined to be "mandated" by the FAPT in order to keep the child in the less restrictive placement for special education purposes.

The following listing presents examples of types of services students might receive and fiscal responsibility.

Category A. Services that are always the responsibility of the CSA Pool.

- All services specified in the student's IEP for children in private day or residential special education placements. This shall include room and board for those students in residential placements. The local school divisions shall provide and pay for transportation for the child to the placement.
- The special education component (only) of a private residential placement made by the CSA team for non-educational reasons (e.g., foster care, court placement). The

non-educational services may not be charged to the CSA Pool as a special education placement.

Category B. Certain services are the local school division's financial responsibility.⁴

- All services specified in the student's IEP for those students not placed in private day or residential special education placements.
- Aides/paraprofessionals that provide instructional support and those specified in *Regulations Governing Special Education Programs for Children with Disabilities in Virginia*.
- Evaluations associated with special education.
- Homebound instruction.
- Instructional materials.
- Medical services specified in the child's IEP.
- Regional special education program costs.
- Transportation to provide special education and related services.
- Tuition payments to another school division.

Category C. Services that may be billed to the CSA Pool

Some services could be billed to the CSA Pool, with documentation in the FAPT record that addresses why the service is on the IFSP and not the IEP and why it is needed to prevent a more restrictive and expensive **special education** placement. Decisions shall be made on a case-by-case basis, based on the specific child and family situation, and shall reflect the child's educational needs.

- Alternative education.
- Behavioral aides/paraprofessionals.
- Case management.
- Contracted services.
- GED expenses.
- Evaluation not associated with special education.
- In-home counseling.
- In-home services.
- Independent living services.
- Job coaching.
- Medical services not associated with special education.
- Recreation and leisure services.
- Respite care.
- Student mentor.
- Student supervision.

⁴ In some cases, services specified on the IEP may be billable to Medicaid.

- Summer services not included in the child's IEP as extended school year services or remedial services provided by the local school division.
- Tutoring.

Category D. Certain expenses are not billable as “mandated”

There are certain services that may not be considered “mandated” due to the child's eligibility for special education.

- Clothing.
- Substance abuse treatment.
- Juvenile delinquency services ordered by the court.

Education and Medicaid

School divisions can access Medicaid funding for certain special education services identified on the child's IEP and provided in the local school division. Currently, Medicaid reimbursement can be claimed for occupational, physical therapy, speech therapy, skilled nursing services and psychological services provided by Virginia public schools. For more information about the Medicaid-billing programs in public schools, contact Amy Edwards at the Virginia Department of Education (804-692-0150) or aedwards@mail.vak12ed.edu.

Some children served by CSA teams are placed in residential placements which are funded by Medicaid. As Medicaid will not pay for educational services, the educational portion of such a placement must be paid to assure compliance with compulsory education law. The CSA team will need to budget funds for the educational services. If the child is eligible for special education, the educational services specified on the IEP may be considered mandated. If the child is not eligible for special education, all educational services would be considered non-mandated. If the child is not placed in a residential placement by the CSA team, the local school division and the CSA team have no obligation to pay for educational services.

For more information

Virginia Department of Education staff members are available to respond to any questions regarding the relationship between CSA and special education. Please contact:

Virginia Department of Education
Special Education and Student Services
P.O. Box 2120
Richmond, VA 23218-2120

Lissa Power-deFur, Ph.D., Director
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804-225-2818

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Contact the Department of Education's special education technical assistant specialists with questions regarding special education. Call 804-225-2932 and ask for the specialist with responsibility for your area of the state.

Attachment C

A Summary of Special Education Requirements

Eligibility for special education is based on the determination made by a team of individuals that the child has a disability and by reason thereof needs special education and related services.

Special education is specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.

Related services are those services to assist a child with a disability to benefit from special education. A child may not receive a related service if they are not eligible for special education. Related services include speech-language pathology services, psychological services, and therapeutic recreation, counseling services, school social work services.

Individualized Education Program is a written statement for a child with a disability that is developed, reviewed, and revised in accordance with the requirements of *IDEA*.

IEPs are developed by an IEP team that includes:

- the parents of the child;
- at least one regular education teacher (if the child is in regular education);
- at least one special education teacher;
- a representative of the school division qualified to supervise special education, knowledgeable about general curriculum and availability of resources;
- other individuals who have knowledge or special expertise regarding the child (e.g., social services social workers, probation officers);
- the child, if appropriate.

When the child is 16 or older, the IEP meeting should address transition services and include other agencies that are likely to be responsible for providing or paying for transition services (e.g., community services board).

IEP components include:

- present level of educational performance;
- statement of measurable annual goals, including benchmarks or short-term objectives, to enable the child to progress in the general curriculum;
- how the goals will be measured and how the parents will be informed of progress;
- the special education and related services and supplementary aids and services provided to meet annual goals;
- extent to which the child will not participate with children without disabilities;
- participation in state and district assessments;
- transition services.

IEPs must be reviewed at least annually.

Special education services and placements may not be made by any entity other than the IEP team, with the exception of a hearing officer in a due process hearing.

Private special education placements. Students may be placed in a licensed or certified private special education facilities. The facility must meet the same personnel requirements as the local school division and must provide a program meeting the same standards as those in the public schools. Responsibility for the compliance with the provisions of *IDEA* and *Virginia Special Education Regulations* remains with the local school division for children placed in private special education facilities.

Parental rights: Parents (and the child at age 18) are afforded numerous procedural safeguards including:

- parent participation in meetings to determine evaluation components, eligibility for special education, develop the IEP and determine placement (including CSA meetings addressing placement);
- advanced notice of meetings and persons in attendance [NOTE: this applies to participation in any meeting about their child's placement, including CSA meetings]
- confidentiality of student's scholastic record;
- right to file a complaint or request a due process hearing over issues of disagreement.